

**UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration**

**NOTICE OF VIOLATION AND ASSESSMENT  
OF ADMINISTRATIVE PENALTY**

**RESPONDENTS:**

Kjell Jensen 5610 176 <sup>th</sup> St. SW Lynnwood, WA 98037  With respect to counts 31-34 and 61-64.	Kurt Van Brero 14745 245 <sup>th</sup> Ave. SE Issaquah, WA 98027  With respect to counts 1-29 and 34-60.	American Seafoods Company LLC and Ocean Rover LLC 2025 First Ave. Seattle, Washington 98121
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**VESSEL:** F/V OCEAN ROVER

**FILE NO.:** AK1101557

**ASSESSED PENALTY:** \$848,000

Respondents, Respondents' attorney or other representative may seek to have this penalty amount modified on the basis that Respondents do not have the ability to pay the assessed penalty. Any request to have the penalty amount modified on this basis must be made in accordance with 15 C.F.R. § 904.102 and should be accompanied by supporting financial information.

**This is your official Notice of the civil violation and administrative penalty described herein.**

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**FACTS CONSTITUTING VIOLATION:**

Count 1 -- On or about the dates of Jan. 31, Feb. 2, 4 and 12, and Mar. 25 and 26, 2011, while fishing for groundfish in the Bering Sea and Aleutian Island Management Area, Kurt Van Brero, operator of the F/V OCEAN ROVER (a listed American Fisheries Act "AFA" catcher/processor), acting through the crew of said vessel, for himself and on behalf of Ocean Rover LLC and American Seafoods Company LLC, made adjustments to the flow scale that failed to bring performance errors closer to zero value, to wit: after an initial daily at-sea scale test that satisfied the Maximum Permissible Error ("MPE") pursuant to 50 CFR 679.28(b)(3), adjusted the scale numerous times so as to bring the performance errors away from a zero value, in violation of the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. and 16 U.S.C. 1857(1)(A) and (G), the American Fisheries Act, Pub.L. 105-227 (enacted Oct. 22, 1998), and of the implementing regulations at 50 CFR 679.7(k)(1)(vi)(A), 679.28(b) and 679.28(b)(4).

Counts 2 - 33 -- Between the dates of February 4 and April 5, 2011, on 32 separate days, while fishing for groundfish in the Bering Sea and Aleutian Island Management Area, Kurt Van Brero, operator of the F/V OCEAN ROVER (a listed AFA catcher/processor) for those dates between February 4 and March 30, 2011, and Kjell Jensen, operator of said Vessel for those dates between March 31 and April 5, 2011, acting through the crew of said vessel, each for himself and on behalf of Ocean Rover LLC and American Seafoods Company LLC, processed pollock and other groundfish that were not weighed on a NMFS-approved scale that meets the MPE of plus or minus ("±") 3 percent, and which was not maintained in proper operating condition throughout its use, in violation of the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. and 16 U.S.C. 1857(1)(A) and (G), the American Fisheries Act, Pub.L. 105-227 (enacted Oct. 22, 1998), and implementing regulations at 50 CFR 679.7(k)(1)(vi)(A), 679.28(b) and

679.28(b)(4), to wit:

Count 2 – On or about Feb. 4, 2011, weighed haul number 57 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers show that the flow scale was weighing -5.83%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 3 – On or about Feb. 5, 2011, weighed haul number 59 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers show that the flow scale was weighing -3.67%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 4 – On or about Feb. 12, 2011, weighed haul number 78 on a flow scale that was not maintained in proper operating condition and where 2 independent tests conducted by NMFS certified observers during the haul show that the flow scale was weighing -5.52% and -3.69%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 5 – On or about Feb. 14, 2011, weighed haul numbers 86 and 87 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 86 was weighing -4.45%, -5.57%, -5.37%, -4.88%; and that the flow scale for Haul 87 was weighing -6.65%, -5.37%, -5.44% and -5.24%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 6 - On or about Feb. 15, 2011, weighed haul numbers 90 and 91 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 91 was weighing -5.38%, -3.25%, -3.89%; and for Haul 91 -3.17%, -3.07%, -2.84%, -3.44%, -3.23%, +5.76%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 7 - On or about Feb. 16, 2011, weighed haul numbers 94 and 95 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 94 was weighing -3.48%, -4.37%, -5.69%, -2.51% and -2.84%; and for Haul 95 was weighing -3.11% and -3.89%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 8 - On or about Feb. 17, 2011, weighed haul number 96 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers during that haul show that the flow scale for Haul 96 was weighing -5.65%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 9 - On or about Feb. 18, 2011, weighed haul numbers 99 and 100 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 99 was weighing -3.45%, -6.66% and -6%; and for Haul 100 was weighing -5.58%, -5.15% and -4.35%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 10 - On or about Feb. 19, 2011, weighed haul numbers 103, 104 and 105 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 103 was weighing -4.25%, -5.03%, -3.60%, -4.63% and -4.20%; for Haul 104 was weighing -1.49%, -2.19% and -7.43%; and for

Haul 105 was weighing -5.93% and -6.36%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 11 - On or about Feb. 21, 2011, weighed haul numbers 109 and 110 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 109 was weighing -5.71%, -2.15%, -4.72%, -7.76% and -5.50%; and for Haul 110 was weighing -8.92%, -7.55% and -7.37%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 12 - On or about Feb. 22, 2011, weighed haul number 114 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 114 was weighing -7.15%, -6.71%, -4.50%, -3.43%, -2.91% and -8.72%, the flow scale then "passed" the Daily at-sea test and a subsequent independent test conducted by the NMFS certified observers during Haul 114 showed that the flow scale was weighing -8.72%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 13 - On or about Feb. 25, 2011, weighed haul numbers 119 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 119 was weighing -6.39% and -1.76%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 14 - On or about Feb. 26, 2011, weighed haul numbers 120, 121 and 122 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 120 was weighing -8.62%, -9.01%, -11.01% and -8.35%; for Haul 121 was weighing -7.23%, -7.54%, -8.75%, -10.63% and -7.71%; and for Haul 122 was weighing -6.01%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 15 - On or about March 1, 2011, weighed haul number 132 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during that haul show that the flow scale for Haul 132 was weighing -9.96%, -13.82%, -17.58% and -17.18%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 16 - On or about March 3, 2011, weighed haul numbers 140 and 141 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 140 was weighing -8.88%, -9.57%, -12.23%, -12.93% and -19.01%; and the flow scale for Haul was weighing -3.91%, -1.85%, -29.82%, -4.86%, -11.41% and -26.98%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 17 - On or about March 4, 2011, weighed haul numbers 144 and 145 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 144 was weighing -6.53%, -2.20%, -10.69%, -11.02% and -10.45%; and the flow scale for Haul 145 was weighing -4.58%, -2.54%, -4.28%, -5.98% and -3.88%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 18 - On or about March 1, 2011, weighed haul number 132 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified

observers during that haul show that the flow scale for Haul 132 was weighing -9.96%, -13.82%, -17.58% and -17.18%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 19 – On or about March 11, 2011, weighed haul number 163 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during that haul show that the flow scale for Haul 163 was weighing -11.02% and -3.74%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 20 – On or about March 12, 2011, weighed haul number 166 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during that haul show that the flow scale for Haul 166 was weighing -13.82%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 21 – On or about March 19, 2011, weighed haul number 183 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during that haul show that the flow scale for Haul 183 was weighing -18.42%, -6.86%, -4.90% and -2.93%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 22 – On or about March 20, 2011, weighed haul number 185 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers during that haul show that the flow scale for Haul 185 was weighing -4.11%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 23 – On or about March 22, 2011, weighed haul number 190 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during that haul show that the flow scale for Haul 190 was weighing -12.72% and -13.82%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 24 – On or about March 24, 2011, weighed haul numbers 198, 199 and 200 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 198 was weighing -8.05%, -9.07%, -7.9%, -7.31% and -7.06%; for Haul 199 was weighing -9.68%; and for Haul 200 was weighing -8.79%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 25 – On or about March 25, 2011, weighed haul number 201 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during that haul show that the flow scale for Haul 201 was weighing -7.82%, -6.83%, -4.58%, -4.69%, -7.09% and -6.27%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 26 – On or about March 26, 2011, weighed haul number 203 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers during that haul show that the flow scale for Haul 203 was weighing -4.07%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 27 – On or about March 27, 2011, weighed haul numbers 206, 208 and 210 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 206 was weighing -6.35%; for Haul 208 was weighing -7%; and for Haul 210 was weighing -4.97%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 28 – On or about March 28, 2011, weighed haul numbers 211, 212, 213 and 214 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 211 was weighing -5.23% and -2.61%; for Haul 212 was weighing -3.72%, -9.84%, -0.48% and -4.66%; for Haul 213 was weighing -6.94%; and for Haul 214 was weighing -6.58%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 29 – On or about March 29, 2011, weighed haul number 215 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers during that haul show that the flow scale for Haul 215 was weighing -6.04% and -4.36%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 30 – On or about April 1, 2011, weighed haul number 218 on a flow scale that was not maintained in proper operating condition and where an independent test conducted by NMFS certified observers during that haul show that the flow scale for Haul 218 was weighing -11.24%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 31 – On or about April 2, 2011, weighed haul numbers 219, 220 and 223 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 219 was weighing -11.26%; for Haul 220 was weighing -10.71%; and for Haul 223 was weighing -14.45%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 32 – On or about April 4, 2011, weighed haul numbers 224, 225 and 226 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 224 was weighing -8.02% and -7.41%; for Haul 225 was weighing -12.18%; and for Haul 226 was weighing -14.39%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Count 33 - On or about April 5, 2011, weighed haul numbers 228, 229 and 231 on a flow scale that was not maintained in proper operating condition and where independent tests conducted by NMFS certified observers during each haul show that the flow scale for Haul 228 was weighing -14.50% and -13.79%; for Haul 229 was weighing -13.15%; and for Haul 231 was weighing -4.8%, which operating condition failed to meet the MPE of  $\pm 3\%$  throughout its use;

Counts 34 – 64 -- Between the dates of Feb. 5 and April 5, 2011, on 31 separate days, while fishing for groundfish in the Bering Sea and Aleutian Island Management Area, Kurt Van Brero, operator of the F/V OCEAN ROVER (a listed AFA catcher/processor) for the dates between February 5 and March 30, 2011, and Kjell Jensen, operator of said Vessel for the dates between March 31 and April 5, 2011, acting each for himself and on behalf of Ocean Rover LLC and American Seafoods Company LLC, failed to record the scale weight of each haul to the nearest pound or .001 mt and submitted inaccurate information in the Daily Cumulative Production Logbook (DCPL) by using the inaccurate weights generated by the Vessel's flow scale, in violation of the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. and 16 U.S.C. 1857(1)(A) and (G), the American Fisheries Act, Pub.L. 105-227 (enacted Oct. 22, 1998), and implementing regulations at 50 CFR 679.5(c)(4)(vi)(H)(2) and 679.7(a)(10)(iii), to wit:

Count 34 – On or about February 5, 2011, failed to accurately record the scale weights for Hauls 57 and 59 to the nearest pound or .001 mt;

Count 35 – On or about February 12, 2011, failed to accurately record the scale weight for Haul 78 to the nearest pound or .001 mt;

Count 36 – On or about February 14, 2011, failed to accurately record the scale weight for Hauls 86 and 87 to the nearest pound or .001 mt;

Count 37 – On or about February 15, 2011, failed to accurately record the scale weight for Hauls 90 and 91 to the nearest pound or .001 mt;

Count 38 – On or about February 16, 2011, failed to accurately record the scale weight for Haul 94 to the nearest pound or .001 mt;

Count 39 – On or about February 17, 2011, failed to accurately record the scale weight for Hauls 95 and 96 to the nearest pound or .001 mt;

Count 40 – On or about February 18, 2011, failed to accurately record the scale weight for Hauls 99 and 100 to the nearest pound or .001 mt;

Count 41 – On or about February 19, 2011, failed to accurately record the scale weight for Hauls 103 and 104 to the nearest pound or .001 mt;

Count 42 – On or about February 20, 2011, failed to accurately record the scale weight for Haul 105 to the nearest pound or .001 mt;

Count 43 – On or about February 21, 2011, failed to accurately record the scale weight for Hauls 109 and 110 to the nearest pound or .001 mt;

Count 44 – On or about February 22, 2011, failed to accurately record the scale weight for Haul 114 to the nearest pound or .001 mt;

Count 45 – On or about February 26, 2011, failed to accurately record the scale weight for Haul numbers 119, 120, 121 and 122 to the nearest pound or .001 mt;

Count 46 – On or about March 1, 2011, failed to accurately record the scale weight for Haul 132 to the nearest pound or .001 mt;

Count 47 – On or about March 3, 2011, failed to accurately record the scale weight for Hauls 140 and 141 to the nearest pound or .001 mt;

Count 48 – On or about March 4, 2011, failed to accurately record the scale weight for Hauls 144 and 145 to the nearest pound or .001 mt;

Count 49 – On or about March 5, 2011, failed to accurately record the scale weight for Haul 148 to the nearest pound or .001 mt;

Count 50 – On or about March 11, 2011, failed to accurately record the scale weight for Haul 163 to the nearest pound or .001 mt;

Count 51 – On or about March 12, 2011, failed to accurately record the scale weight for Haul 166 to



the nearest pound or .001 mt;

Count 52 – On or about March 19, 2011, failed to accurately record the scale weight for Haul 183 to the nearest pound or .001 mt;

Count 53 – On or about March 20, 2011, failed to accurately record the scale weight for Haul 185 to the nearest pound or .001 mt;

Count 54 – On or about March 22, 2011, failed to accurately record the scale weight for Haul 190 to the nearest pound or .001 mt;

Count 55 – On or about March 24, 2011, failed to accurately record the scale weight for Hauls 198 and 199 to the nearest pound or .001 mt;

Count 56 – On or about March 25, 2011, failed to accurately record the scale weight for Hauls 200 and 201 to the nearest pound or .001 mt;

Count 57 – On or about March 26, 2011, failed to accurately record the scale weight for Haul 203 to the nearest pound or .001 mt;

Count 58 – On or about March 27, 2011, failed to accurately record the scale weight for Hauls 206, 208 and 210 to the nearest pound or .001 mt;

Count 59 – On or about March 28, 2011, failed to accurately record the scale weight for Hauls 211, 212 and 213 to the nearest pound or .001 mt;

Count 60 – On or about March 29, 2011, failed to accurately record the scale weight for Hauls 214 and 215 to the nearest pound or .001 mt;

Count 61 – On or about April 1, 2011, failed to accurately record the scale weight for Haul 218 to the nearest pound or .001 mt;

Count 62 – On or about April 2, 2011, failed to accurately record the scale weight for Hauls 219, 220 and 223 to the nearest pound or .001 mt;

Count 63 – On or about April 4, 2011, failed to accurately record the scale weight for Hauls 224, 225 and 226 to the nearest pound or .001 mt; and

Count 64 - On or about April 5, 2011, failed to accurately record the scale weight for Hauls 228, 229 and 231 to the nearest pound or .001 mt.

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**STATUTE/REGULATION VIOLATED:**

Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.; 16 U.S.C. 1857(1)(A) and (G); 50 CFR 679.7(k)(1)(vi)(A), 50 CFR 679.28(b) and 679.28(b)(4), and 50 CFR 679.5(c)(4)(vi)(H)(2) and 679.7(a)(10)(iii).

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SEIZED ITEM(S): None.

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NOTICE:

This is not a criminal action. Respondents, Respondents' attorney, or other representatives have 30 days following service of this Notice in which to respond. During this time any Respondent may:

1. Accept the assessed penalty by signing the AGREED DISPOSITION below and returning this document to Agency counsel:

Susan Auer, Senior Enforcement Attorney  
Office of the General Counsel, Enforcement Section, Alaska  
P.O. Box 21109  
Juneau, Alaska 99802

Upon receipt of your signed AGREED DISPOSITION, Agency counsel will sign it and mail copies to you and the NOAA Finance Office. The NOAA Finance Office will send you a bill and direct you where to send your payment. (Do NOT send your check or money order to Agency counsel. It will be returned to you.)

2. Seek to have this Notice modified to conform to the facts or the law as Respondent sees them, by contacting in writing the attorney specified below. (If you seek to have the penalty amount modified by Agency counsel on the basis that you do not have the ability to pay the assessed penalty, your request must be made in accordance with the Agency's civil procedure regulations at 15 C.F.R. Part 904, and should be accompanied by supporting financial information.)
3. Request a hearing (like a trial) before an Administrative Law Judge (ALJ) to deny or contest all, or any part, of the violation charged and the civil penalty assessed. If a hearing is requested, the ALJ will independently determine whether a violation occurred and what penalty, if any, is warranted. THE ALJ IS NOT BOUND BY THE AMOUNT ASSESSED IN THIS NOTICE BUT MAY FIX A PENALTY BASED UPON HIS JUDGMENT OF WHAT IS APPROPRIATE, UP TO THE MAXIMUM PROVIDED BY LAW. Under the Magnuson Stevens Fishery Conservation and Management Act, A MAXIMUM CIVIL PENALTY OF \$100,000 MAY BE ASSESSED FOR EACH VIOLATION. (Effective December 14, 2004, a maximum civil penalty of \$130,000 may be assessed for each violation. 69 Fed.Reg. 74416 (Dec. 14, 2004). For violations that occur after Dec. 11, 2008, the maximum civil penalty for each violation is \$140,000. (73 Fed.Reg. 75321 (Dec. 11, 2008).) A hearing request must be in writing and be dated, and must be served either in person or by certified or registered mail, return receipt requested, at the address specified below. The request must either be accompanied by a copy of this Notice or refer to the case number appearing in the heading of the Notice;
4. Take no action. If no Respondent responds within 30 days of service of this Notice, this Notice (including the assessed penalty) becomes final in accordance with 15 C.F.R. 904.104.

For good cause shown, Respondents may, within the 30-day period specified above, obtain an extension of time to respond.

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JOINT AND SEVERAL LIABILITY:



This civil penalty is assessed jointly and severally against Ocean Rover LLC, and American Seafoods Company LLC, Kurt Van Brero (with respect only to counts 1-29 and 34-60), and Kjell Jensen (with respect only to 31-34 and 61-64). Respondents jointly, and each individually, are liable for the respective assessed penalties. Whether one pays the entire amount or each pays equal or unequal portions is for Respondents to determine. This case will not be closed, however, against any Respondent until the entire penalty amount is paid.

WARNING! IF NO RESPONDENT EXERCISES THE RIGHTS SPECIFIED ABOVE WITHIN 30 CALENDAR DAYS FOLLOWING SERVICE OF THIS NOTICE, ALL OF THE ALLEGATIONS AND THE PENALTY HEREIN WILL BE TAKEN AS ADMITTED AND THIS ASSESSMENT WILL BECOME A FINAL ADMINISTRATIVE ORDER ENFORCEABLE IN ANY UNITED STATES DISTRICT COURT as provided in the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. and 16 U.S.C. 1858(a), and the implementing regulations located at 15 C.F.R. Part 904.

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FINDINGS, CONCLUSIONS AND ORDER:

Based on a review and application of the facts that comprise the violation charged, penalty schedules, penalty matrixes, adjustment factors, and economic considerations set forth in NOAA's Policy for Assessment of Penalties and Permit Sanctions (see attached penalty worksheets and spreadsheet, and [www.gc.noaa.gov/documents/031611\\_penalty\\_policy.pdf](http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf)), I hereby find and conclude that the Respondents herein violated the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., as alleged, and that a just and reasonable disposition for such violation(s) is a civil penalty in the aggregate amount of \$848,000.

IT IS SO ORDERED.

For the Secretary of Commerce



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Susan K. Auer

Dated: Wednesday, May 8, 2013.

Send reply or make inquiry to: Susan K. Auer, Senior Enforcement Attorney, NOAA, Office of General Counsel, U.S. Department of Commerce, P.O. Box 21109, Juneau, Alaska 99802. Telephone: (907) 586-7078, Email: [susan.auer@noaa.gov](mailto:susan.auer@noaa.gov).

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In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman to receive comments from small businesses about excessive or unfair federal regulatory enforcement actions. If a small business wishes to comment on the enforcement actions of NOAA, it may do so via the internet at [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman), email at [ombudsman@sba.gov](mailto:ombudsman@sba.gov), mail (Small Business Administration, Office of the National Ombudsman, 409 Third St. SW, Washington, D.C. 20416), or by calling 1-888-REG-FAIR. Please note: The right to file comments with the Ombudsman is independent of the rights afforded every respondent, including the right to contest the assessment of a civil monetary penalty or permit sanction. If you wish to exercise any of your rights as a respondent, you must do so in accordance with the procedures described in this document and 15 C.F.R. Part 904, and separately from any comments you may provide to the Ombudsman.

UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration

AGREED DISPOSITION:

RESPONDENTS:

Kjell Jensen 5610 176 <sup>th</sup> St. SW Lynnwood, WA 98037  With respect to counts 31-34 and 61-64.	Kurt Van Brero 14745 245 <sup>th</sup> Ave. SE Issaquah, WA 98027  With respect to counts 1-29 and 34-60.	American Seafoods Company LLC and Ocean Rover LLC 2025 First Ave. Seattle, Washington 98121
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VESSEL: F/V OCEAN ROVER

FILE NO.: AK1101557

I, the undersigned, admit the violations alleged in the Notice of Violation and Assessment (Notice) and hereby waive my right to a hearing. The Respondents collectively and jointly hereby agree to pay the assessed penalty in the amount of \$848,000 in accordance with instructions received from the NOAA Finance Office.

I take this action on the understanding that it is a settlement of all charges, claims and complaints against me by the United States resulting from the incidents described in this Notice.

NOAA accepts Respondents' payment of the assessed penalty and Respondents' compliance with the terms and conditions of this settlement agreement in full settlement and satisfaction of any and all claims or charges by the Secretary of Commerce or NOAA against any Respondent resulting from the incidents described in the Notice. This settlement documents an offense, and may be considered in assessment of a penalty should any Respondent commit a subsequent violation of any statute or regulation NOAA enforces, or in determining whether any Respondent or the F/V OCEAN ROVER should receive a permit or other benefit from NOAA.

\_\_\_\_\_  
Kurt Van Brero

\_\_\_\_\_  
Date

Social Security No.: \_\_\_\_\_

\_\_\_\_\_  
Kjell Jensen

\_\_\_\_\_  
Date

Social Security No.: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Ocean Rover LLC

\_\_\_\_\_  
Date

Ocean Rover LLC Tax I.D. No.: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative of Ocean Rover LLC

\_\_\_\_\_  
Date

American Seafoods Company LLC Tax I.D. No.: \_\_\_\_\_

ACCEPTED ON BEHALF OF NOAA:

\_\_\_\_\_  
Susan K. Auer, Senior Enforcement Attorney  
Office of the General Counsel

\_\_\_\_\_  
Date

**Case No.AK1101557**

**Penalty Assessment Worksheet**

Respondent(s): American Seafoods Company LLC; Ocean Rover LLC; Van Brero, Kurt  
(Jan.18 – Mar. 30, 2011) and Jensen, Kjell (Mar. 31 – Apr. 8, 2011)

Count 1: 50 CFR 679.28(b)(4)

Make adjustments to flow scale that do not bring performance errors closer to zero value.

The penalty assessed in this NOTICE is based on a review and application of the facts that comprise the violation(s) charged, penalty schedules, penalty matrixes, adjustment factors, and economic considerations set forth in NOAA's Policy for Assessment of Penalties and Permit Sanctions (see [http://www.gc.noaa.gov/documents/031611\\_penalty\\_policy.pdf](http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf))

Under this Policy, NOAA has applied the following analysis to determine the appropriate penalty in this case:

<b>I.</b>	<b>Base Penalty</b>	<u>Base Penalty</u>
	A. Offense Level	III *
	B. Culpability	D
	C. Matrix Penalty	\$30,000
		<u>Adjustment Factors</u>
	D. History of Compliance	
	E. Commercial/Recreational	Commercial
	F. Activity After Violation/Cooperation	
	G. Additional Aggravating Factor	\$10,000 **
	<b>Total Base Penalty:</b>	<b>\$40,000</b>
<b>II.</b>	<b>Proceeds of the Unlawful Activity and Additional Economic Benefit</b>	
	A. Proceeds of Unlawful Activity	
	B. Additional Economic Benefit	
	<b>Total Economic Benefit:</b>	
<b>III.</b>	<b>TOTAL PENALTY for each count (I + II)</b>	<b>\$40,000</b>

\* Failing to Comply with flow scale or other scale testing and certification requirements.

\*\* Continuing pattern of violations and number of incidents included in count.

**Case No.AK1101557**

**Penalty Assessment Worksheet**

Respondent(s): American Seafoods Company LLC; Ocean Rover LLC; Van Brero, Kurt  
(Jan.18 – Marc. 30, 2011) and Jensen, Kjell (Mar. 31 – Apr. 8, 2011)

Counts 2 through 33: 50 CFR 679.28(b), 679.28(b)(4) and 679.7(k)(1)(vi)(A)  
Process any groundfish that was not weighed on a NMFS-approved scale that meets the maximum permissible error of plus or minus 3 percent, and which was not maintained in proper operating condition throughout its use. (See attached spreadsheet for details regarding each count)

The penalty assessed in this NOTICE is based on a review and application of the facts that comprise the violation(s) charged, penalty schedules, penalty matrixes, adjustment factors, and economic considerations set forth in NOAA's Policy for Assessment of Penalties and Permit Sanctions (see [http://www.gc.noaa.gov/documents/031611\\_penalty\\_policy.pdf](http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf))

Under this Policy, NOAA has applied the following analysis to determine the appropriate penalty in this case:

<b>I.</b>	<b>Base Penalty</b>	<u>Base Penalty</u>
	A. Offense Level	III *
	B. Culpability	C
	C. Matrix Penalty	\$30,000
		<u>Adjustment Factors</u>
	D. History of Compliance	
	E. Commercial/Recreational	Commercial
	F. Activity After Violation/Cooperation	
	<b>Total Base Penalty:</b>	<b>\$17,500</b>
<b>II.</b>	<b>Proceeds of the Unlawful Activity and Additional Economic Benefit</b>	
	A. Proceeds of Unlawful Activity	
	B. Additional Economic Benefit	
	<b>Total Economic Benefit:</b>	
<b>III.</b>	<b>TOTAL PENALTY for each count (I + II)</b>	<b>\$17,500</b>

\* Failing to Comply with flow scale or other scale testing and certification requirements.

**Case No.AK1101557**

**Penalty Assessment Worksheet**

Respondent(s): American Seafoods Company LLC; Ocean Rover LLC; Van Brero, Kurt  
(Jan.18 – Marc. 30, 2011) and Jensen, Kjell (Mar. 31 – Apr. 8, 2011)

Counts 34 - 64: 50 CFR 679.5(c)(4)(vi)(H)(2), 679.7(a)(10)(iii)  
Inaccurate haul weight in Daily Cumulative Production Logbook

The penalty assessed in this NOTICE is based on a review and application of the facts that comprise the violation(s) charged, penalty schedules, penalty matrixes, adjustment factors, and economic considerations set forth in NOAA's Policy for Assessment of Penalties and Permit Sanctions (see [http://www.gc.noaa.gov/documents/031611\\_penalty\\_policy.pdf](http://www.gc.noaa.gov/documents/031611_penalty_policy.pdf))

Under this Policy, NOAA has applied the following analysis to determine the appropriate penalty in this case:

<b>I.</b>	<b>Base Penalty</b>	<u>Base Penalty</u>
	A. Offense Level	II *
	B. Culpability	C
	C. Matrix Penalty	\$30,000
		<u>Adjustment Factors</u>
	D. History of Compliance	
	E. Commercial/Recreational	Commercial
	F. Activity After Violation/Cooperation	
	G. Additional Aggravating Factor	
	<b>Total Base Penalty:</b>	<b>\$ 8,000</b>
<b>II.</b>	<b>Proceeds of the Unlawful Activity and Additional Economic Benefit</b>	
	A. Proceeds of Unlawful Activity	
	B. Additional Economic Benefit	
	<b>Total Economic Benefit:</b>	
<b>III.</b>	<b>TOTAL PENALTY for each count (I + II)</b>	<b>\$ 8,000</b>

\* Failure to provide accurate logbooks or other reports.

Count No.	VIOLATION DATES	HAUL NUMBER(S)	REGULATION VIOLATED	OFFENSE LEVEL	CULPABILITY	MATRIX PENALTY	TOTAL PENALTY
1	1/31, 2/2, 2/4, 2/12, 3/25, 3/26, 2011	n/a	Make adjustments that do not bring performance errors closer to zero value 50 CFR 679.28(b)(4)	III	D - Intentional	\$40,000	\$ 40,000.00
2	2/4/2011	57	Inaccurate Flowscale: 50 CFR 679.28(b), 679.28(b)(4) and 679.7(k)(1)(vi)(A)	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
3	2/5/2011	59	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
4	2/12/2011	78	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
5	2/14/2011	86, 87	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
6	2/15/2011	90, 91	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
7	2/16/2011	94, 95	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
8	2/17/2011	96	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
9	2/18/2011	99, 100	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
10	2/19/2011	103, 104, 105	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
11	2/21/2011	109, 110	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
12	2/22/2011	114	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
13	2/25/2011	119	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
14	2/26/2011	120, 121, 122	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
15	3/1/2011	132	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
16	3/3/2011	140, 141	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
17	3/4/2011	144, 145	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
18	3/5/2011	148	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
19	3/11/2011	163	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
20	3/12/2011	166	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
21	3/19/2011	183	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
22	3/20/2011	185	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
23	3/22/2011	190	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
24	3/24/2011	198, 199, 200	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
25	3/25/2011	201	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
26	3/26/2011	203	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
27	3/27/2011	206, 208, 210	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
28	3/28/2011	211, 212, 213, 214	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
29	3/29/2011	215	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
30	4/1/2011	218	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
31	4/2/2011	219, 220, 223	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
32	4/4/2011	224, 225, 226	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
33	4/5/2011	228, 229, 231	"	III	C - Reckless	\$ 17,500.00	\$ 17,500.00
34	2/5/2011	57 and 59	Inaccurate Haul weight in DCPL: 50 CFR 679.5(c)(4)(vi)(H)(2), 679.7(a)(10)(iii)	II	C - Reckless	\$8,000	\$8,000
35	2/12/2011	78	"	II	C - Reckless	\$8,000	\$8,000
36	2/14/2011	86 & 87	"	II	C - Reckless	\$8,000	\$8,000
37	2/15/2011	90 & 91	"	II	C - Reckless	\$8,000	\$8,000
38	2/16/2011	94	"	II	C - Reckless	\$8,000	\$8,000



[illegible]